

1 **MEMORANDUM OF AGREEMENT**

2 **Developed by**

3
4 **The United States Department of Defense**

5 **The United States Fish and Wildlife Service**

6 **The United States Forest Service**

7
8 **and**

9 **Other cooperating agencies, facilities and organizations as appropriate**

10
11 **Conservation of the Gopher Tortoise in its Eastern**
12 **Distribution**

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16 This Memorandum of Agreement (hereinafter referred to as the "Agreement") is
17 being developed by the United States Department of Defense and the United States
18 Fish and Wildlife Service and those other agencies, organizations, and other partners
19 as elect to join in this agreement through signing an intent to participate.

20
21 **BACKGROUND**

22 Military installations, National Forests, and other Federal and state-owned or
23 managed lands in the southeastern states total more than 9.6 million acres (about 4.4

million hectares). In this land area are significant parcels where the intensity of use is low enough, or the level of legal protection is high enough, to allow the persistence of populations of species which, though originally common, are now much less common outside these public properties. Some of these species are designated as endangered or threatened under the Endangered Species Act of 1973 (PL 93-205; 16 USC 1531 et seq., as amended) (ESA). Others are not yet so designated, but are considered locally or regionally threatened or of special concern (“at risk”). Managers of these properties are regularly called upon to accommodate the needs of such species to the greatest degree possible without compromising the public use and essential mission activities of the property.

One of these “Species at Risk” is the gopher tortoise (*Gopherus polyphemus*), a land-dwelling turtle historically found in parts of six southeastern states. The original distribution was associated with open pine forests, especially the longleaf pine (*Pinus palustris*), where friable soils allowed construction of the tortoise burrows. It is now restricted at the edges of its distribution in South Carolina and Louisiana to only one or two counties/parishes. Large populations are found in Mississippi, Alabama, Georgia and Florida. Populations are declining throughout the species’ distribution. Auffenberg and Franz (1982) estimated that in the last 100 years gopher tortoise populations have declined by 80%. This significant decline contributed to the species being listed by the U. S. Fish and Wildlife Service (FWS) as “Threatened” in the western portion of the range (Louisiana, Mississippi, and west of the Tombigbee and Mobile Rivers in Alabama) (*Federal Register*, July 7, 1987). However, declines in populations are occurring throughout the southeast because of habitat conversion and lack of fire

management. The gopher tortoise is being studied throughout its range as a part of the Army Threatened and Endangered Species (TES) research program due to its potential for causing training conflicts at locations within the non-listed (eastern) population were it to be listed. At least 18 military bases have known populations of gopher tortoises (Wilson et al., 1997), including: Ft. Rucker, AL, and several of its outlying landing fields; Forts Benning, Gordon, and Stewart, GA; Camp Blanding and Eglin AFB, FL; and other Navy, Marine Corps, and Air Force installations in Florida and Georgia. Forts Benning and Stewart, GA, especially, are major Army land training installations where large populations of the gopher tortoise survive. These Georgia installations manage the gopher tortoise at its current, state-level designation as a threatened species, however the potential for significant additional management burden and for further impact on mission should the species proceed to listing under the ESA is the reason for research on eastern gopher tortoise populations.

Characteristically, gopher tortoise populations occurred primarily on sandy soils in relatively open pine and mixed pine-hardwood stands that were maintained by wildfire. Throughout their range, exclusion of fire or ineffective burning has transformed open upland habitat into dense mixed hardwood forests that are no longer suitable for gopher tortoises. Gopher tortoises now often inhabit disturbed areas that are cleared and maintained as some mix of grasses and forbs, usually through mowing. On military bases, gopher tortoises often locate their burrows in areas that are maintained for training (e.g. firing points, ranges, and margins of airstrips). While many state and National Forests support excellent tortoise habitat, in other managed forest lands, and on many unprotected lands, tortoises are distributed in elongated clusters of burrows

70 along highway and pipeline rights of way, railroads, and other locations where an open,
71 sunny habitat may be found. This proximity to high levels of human activity also places
72 tortoises at higher risk of being killed on the highway as well as being taken by
73 predators, including humans.

74 Continuing incompatible urban development and the ongoing loss of open natural
75 lands within the gopher tortoise's range will surely further threaten this species, which is
76 an important component of the southeast's fauna. Habitat fragmentation and loss could
77 threaten the region's rich environment and jeopardize the long-term survival of the
78 several threatened and endangered plant and animal species that utilize the same
79 habitat.

80 The gopher tortoise is a keystone species within its habitat. Common associates
81 in many parts of the gopher tortoise's range include other rare species such as eastern
82 indigo snake (*Drymarchon couperi*), gopher frog (*Rana capito*), sandhill chaffhead
83 (*Carphephorus belli*) and sandhill gay-feather (*Liatris secunda*). Tortoise habitat,
84 like that of the red-cockaded woodpecker (*Picoides borealis*), with which it is, or once
85 was, often associated, must be actively managed (e.g., forest thinning, regular
86 prescribed burning) to maintain the open canopy and diverse forage that support gopher
87 tortoises.

88 Much of the remaining gopher tortoise habitat for the eastern population is on
89 sandy soils in Alabama, Georgia, and South Carolina, as well as throughout Florida,
90 where the majority of the eastern population is resident. If the eastern population
91 becomes imperiled to the extent that Federal listing is warranted, that listing will
92 represent another regulatory challenge to military training, silviculture, infrastructure

development, and other anthropogenic land management activities throughout this region.

STATEMENT OF MUTUAL BENEFIT AND INTEREST

The Parties represent a variety of interests and have concerns, missions and goals that overlap substantially with respect to the gopher tortoise.

PURPOSE

The purpose of this Agreement is to foster an increased level of communication, collaboration, and conservation among the Parties to actively manage and conserve gopher tortoise populations and habitat. The methods to further this goal will remain the choice of each partner, but may include, as appropriate, increasing levels of awareness and protection for existing gopher tortoise populations, the development of improved management plans for enhancing gopher tortoise habitats within existing organizational procedures, the identification and prioritization of land acquisition and conservation opportunities that will protect existing and potential habitats, and the development of educational, regulatory enforcement, and other programs designed to reduce loss of individuals. It is not intended to supersede or contradict any governmental planning or regulatory decisions. The Parties will work with local governments and other interested citizens in developing any such plans and programs.

GOAL

The ultimate goal for the Parties is to create an environment throughout its natural area of distribution in which the gopher tortoise will not only survive, but thrive, and that this success will provide a model for the management of other species at risk.

OBJECTIVES

To achieve these goals each of the Parties will, subject to each Party's legal authorities, regulations, policies, priorities and availability of funding, endeavor to achieve the following specific objectives:

- Enhance communication and coordination among participants and other interested parties to identify opportunities for collaborative action to further acquisition, protection, restoration and management of gopher tortoise habitat.
- Encourage federal, state, regional, local and private funding to acquire, protect, restore, monitor and manage gopher tortoise habitat.
- Encourage public/private partnerships among governmental agencies, community and non-governmental organizations, academic institutions, corporations, and private landowners to coordinate resources and achieve habitat conservation results on a large landscape scale.
- Promote the education of interested private individual and corporate landowners regarding tortoise conservation and habitat management.

- Utilize Geographic Information System (GIS) analyses to identify the most ecologically important areas in need of protection that may also serve to protect military test and training missions and the mission of the Parties.
- Promote the sustainability of the military, Fish and Wildlife Service, and Forest Service mission in the region by utilizing all appropriate conservation tools to create buffer areas.
- Manage any acquired lands in a manner that will protect their natural resources and that will be consistent with the missions of the Parties.
- Increase simultaneously the recovery potential for other federal and state threatened and endangered species associated with the gopher tortoise and reduce the need to list additional species.
- Work to achieve landscape-level conservation of fish, wildlife, plants, and their habitats through partnerships with interested organizations and individuals.
- Seek to sustain a healthy natural environment to enhance the public's ability to enjoy the outdoors and to conserve natural resources for future generations.
- Explore the development of tools which may be used to implement these objectives.
- To meet annually to provide a status report on activities taken to further the goals of this agreement and to set priorities for the coming year.

DURATION

159 This Agreement Shall become effective upon signature by the first two Parties,
160 and shall have an effective life of five years from that date.

161 This Agreement shall be reviewed prior to its expiration and can be amended by
162 mutual written consent of the Parties.

163 This Agreement may be renewed for any number of periods, each not more than
164 five years, through the process of recirculation of the Agreement in its proposed form
165 and the acquisition of signatures by the Parties.

166 Any party may terminate its participation in this Agreement by giving the other
167 Parties written notice 30 days prior to the termination.

168
169 **OTHER PROVISIONS**

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171 Any public installation, facility, property, or other land-holding entity or private
172 landowner within the natural distribution of the gopher tortoise may elect to become a
173 cooperating Party by subscribing to the Goal of the agreement, whether or not their
174 higher-level organization, if any, is a Party to this agreement.

175 Any organization, governmental or non-governmental, or any private group within
176 the natural distribution of the gopher tortoise may elect to become a cooperating
177 organization by subscribing to the Goal of the agreement.

178 Any Party's implementation of provisions of this Agreement is contingent upon
179 consistency with that Party's authorities and is subject to the availability of funds and
180 any required approval by that Party's governing body.

181 The Parties concur that this Agreement is neither a fiscal nor a funds obligation
182 document. To the extent permitted by each Party's authorities, regulations, policies,
183 programmatic priorities and funding, the Parties each shall provide personnel support to
184 implement the project *Conservation of the Gopher Tortoise in its Eastern Distribution*
185 from within their own agencies or organizations, and shall fund their own participation in
186 gopher tortoise conservation activities. Nothing in this Agreement shall be interpreted to
187 require any obligation or payment of funds in violation of the Anti-Deficiency Act (31
188 U.S.C. 1341 and 1517) or any other applicable statute or regulation.

189 Nothing in this Agreement shall legally require the parties to commit or transfer
190 any funds. Specific work projects or activities that involve the transfer of funds,
191 services, or property among various agencies and offices of the Parties will require
192 execution of separate agreements and be contingent upon the availability of
193 appropriated funds. Such activities must be independently authorized by appropriate
194 statutory authority. This Agreement does not provide such authority. Negotiation,
195 execution, and administration of each such agreement must comply with all applicable
196 statutes and regulations.

197 The Department of Defense enters into this Agreement, and may be authorized
198 to contribute funding support for specific real property acquisitions, in accordance with
199 one or more of the following authorities: 10 U.S.C. 2684a; 10 U.S.C. 2694; 10 U.S.C.
200 2672; 10 U.S.C. 2672a; and 16 U.S.C. 670c-1.

201 The United States Fish and Wildlife Service enters into this Agreement pursuant
202 to its authorities under 16 U.S.C 661 et seq. and 16 U.S.C. 742f.

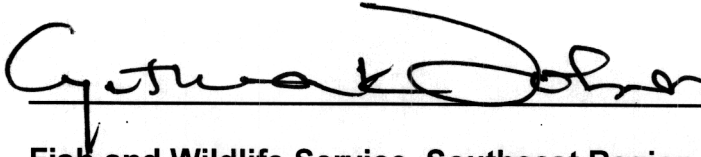
203 Any information furnished to the federal parties under this instrument is subject to
204 the Freedom of Information Act (5U.S.C. 214)

205 This Agreement in no way restricts the Parties from participating in similar
206 activities with other public or private agencies, organizations and individuals.

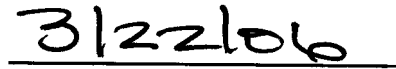
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208 **SIGNATORY PARTNERS:**

SIGNATORY PARTNERS:

A handwritten signature in black ink, appearing to read "Cynthia Doherty", written over a horizontal line.

Fish and Wildlife Service, Southeast Region

A handwritten date "3/22/06" in black ink, written over a horizontal line.

Date

SIGNATORY PARTNER:

Noel Holcomb
Noel Holcomb, Commissioner

Georgia Department of Natural Resources

*Swoon + subscribed to me this
3rd day of May, 2006*

Mary Ann Evans (Notary Seal)

Notary Public

My Commission Expires: May 29, 2007



Signed and sealed and delivered in the presence of:

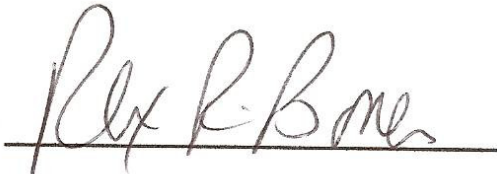
Reginald Hymel
Witness



Jeffrey N. Holmes, Co-chair
Partners in Amphibian and Reptile Conservation (PARC)
Southeastern Working Group (SE-PARC)

MAY 31 2006

SIGNATORY PARTNERS:

A handwritten signature in dark ink, appearing to read "Rex R. Boner", is written over a horizontal line.

Rex R. Boner

Vice President

Southeast Representative

The Conservation Fund

A handwritten date "June 7, 2006" is written in dark ink over a horizontal line.

Date

M. Rebecca Bolt *8 June 2006*

M. Rebecca Bolt, Co-chair
Gopher Tortoise Council

A handwritten signature in black ink, appearing to read 'M. N. Pugh', is written over a horizontal line.

M. N. Pugh, Director

Alabama Division of Wildlife and Freshwater Fisheries

JUN 12 2006

SIGNATORY PARTNER:



John E. Frampton
Director
South Carolina Department of Natural Resources

6/20/02

Date

SIGNATORY PARTNER:

Kenneth D. Haddad

Kenneth D. Haddad, Executive Director
Florida Fish and Wildlife Conservation Commission

STATE OF FLORIDA
COUNTY OF LEON

Sworn and ascribed before me this 22nd day of June, 2006

Jane A. Koerber-Chabre (SEAL)
Notary Signature



Jane A. Koerber-Chabre
My Commission DD250226
Expires November 07 2007

Kenneth D. Haddad is Personally Known ☒ to me OR Produced
Identification _____
[Type of Identification]

Signed and sealed and delivered in the presence of:

Sabrina Menendez

Witness

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
Juan V. Antista
Commission Attorney

SIGNATORY PARTNER:

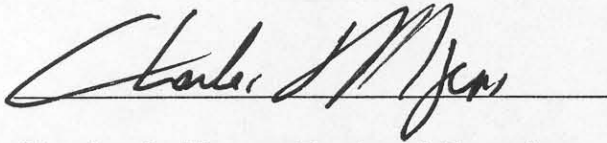
THE NATURE CONSERVANCY, a non-profit
District of Columbia Corporation

By: Robert Bendick, Jr.
Robert Bendick, Jr. as Vice President

6/30/06
Date

Legal Approval by Joan Dwoskin 06/27/06

SIGNATORY PARTNERS:

A handwritten signature in black ink, appearing to read "Charles L. Myers", is written over a horizontal line.

Charles L. Myers, Regional Forester

USDA Forest Service, Southern Region

Date: 7/31/06